



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. Ronald J. Neiman
Neiman & Barnes
P.O. Box 777
Lewisville, Texas 75067

OR94-094

Dear Mr. Neiman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 18390.

The City of Lewisville (the "city") received an open records request for, *inter alia*, "records of any direction or demands made of city staff which were not routed through [the] office of city manager as required by charter." You have submitted to this office for review several documents, portions of which you contend are excepted from required public disclosure.

You contend that portions of the documents you have numbered 2-19 come under the protection of former section 3(a)(11) of the Open Records Act (now found at section 552.111 of the Government Code). Section 552.111 excepts interagency and intraagency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993), this office held that:

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

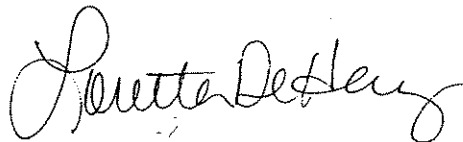
In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. *Id.* After reviewing the records at issue, we have determined that most of the information you seek to withhold from documents 2-19 either is of a purely factual nature or did not play a role in the city's policymaking process and consequently may not be withheld pursuant to section 552.111. We have marked the information that is protected under section 552.111; the city must release all of the remaining information in the documents numbered 2-19.

You next seek to withhold from documents numbered 20 and 21 the names of certain individuals pursuant to the "informer's privilege." For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 391 (1983); 191 (1978). In this instance you have not met your burden of demonstrating that such a report has taken place with regard to any of these individuals; consequently, the city must release these records.

You suggest that portions of the documents you have numbered 22 and 23 are protected from disclosure under the Open Records Act because former section 2(1)(H) (now found at section 552.003(b) of the Government Code) exempts the judiciary from the act's definition of "governmental body." As a general rule, the judiciary is exempt from the provisions of the Open Records Act. However, although the memorandum you seek to withhold was prepared by the city's municipal court administrator, that document is now in the hands of the city secretary. As such it is now a record of the city and is therefore subject to the Open Records Act. Because you have raised none of the exceptions to disclosure listed under subchapter C of the Government Code, the city must release this memorandum.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

²You state that the city has withheld portions of pages 25 and 26 because those portions "were not responsive to the information requested." We note, however, that the requestor has sought "records" containing certain information. Because you do not contend that any of the information contained in pages 25 and 26 is excepted from required public disclosure, the city must release this "record" in its entirety.

LRD/RWP/rho

Ref.: ID# 18390
ID# 19552

Enclosures: Open Records Decision No. 615
Submitted documents

cc: Mr. James Florez
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(w/o enclosures)

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